people subject to United States jurisdiction were entitled to the privileges and immunities guaranteed to every individual. We dedicate a tablet to Marshall's memory while our highest court repudiates Marshall's righteous interpretation and revolutionizes our form of government.

It was Channing who said that "the passion for ruling is the chief peril of free states, the only enemy of free institutions." The lessons of love, of life and of liberty which Channing gave have been forgotten or repudiated.

It was Clay who raised his voice in behalf of Greek independence and asked if we were "so mean and so base" as to refrain from expressing sympathy in behalf of a people struggling for liberty against "the most brutal and atrocious war that ever stained earth or shocked high heaven," and yet we are "so mean and so base" as to refrain from expressing sympathy with the republics of South Africa struggling against an empire.

It was Webster who prayed that by the blessing of God his country might become "a vast and splendid monument, not of oppression and terror, but of wisdom, of peace and of liberty upon which the world may gaze with admiration forever." And yet how far we have gone from Webster's teachings!

Beecher and Emerson were the champions of liberty, the ardent advocates of Americanism as they learned Americanism in the charter of American liberty.

To the memory of these great men we erect tablets; and what a mockery indeed it is to dedicate a tablet to the memory of a man whose counsels we have ignored, whose teachings we have repudiated and whose principles we have violated.

Harrison vs. Brown.

In his now famous, or infamous opinion, Justice Brown sought to reassure our Porto Rican subjects by telling them that they could safely depend upon the benevolence and kindness of congress in the exercise of that body's "unrestrained possession of power." The Pittsburg Post reminds us that Justice Brown, on this point, was well answered by the late Benjamin Harrison. In the January number of the North American Review, General Harrison had an article entitled: "The Status of Annexed Territory." In that article General Harrison said it was inexpressibly absurd that "the constitution does not apply, but all these provisions in it are in full force notwithstanding."

Then General Harrison said:

"It should be asked further, whether the rule of the uniformity of taxation is a part of the 'law of our civilization;' for, without it, all property rights are unprotected. The man whose property may be taxed arbitrarily, without regard to uniformity within the tax district and without any limitation as to the purposes for which taxes may be levied, does not own anything; he is a tenant at will. But if these supposed 'laws of civilization' are not enforcible by the courts, and rest wholly for their sanction upon the consciences of presidents and congresses, then there is a very wide difference. The one is ownership; the other is charity. The one is freedom; the other slavery—however just and kind the master may be.

"Our fathers were not content with an assurance of these great rights that rested wholly upon the sense of justice and benevolence of the congress. The man whose protection from wrong rests wholly upon the benevolence of another man or of a congress, is a slave—a man without rights."

It would be interesting to hear what Benjamin Harrison would have to say in the presence of such a decision as was delivered by Justice Brown. When congress levied the Porto Rican tariff General Harrison referred to it as "a serious departure from right principles." What would he have thought had he known that the highest court in the land had solemnly given its sanction to that "serious departure from right principles?"

It May be Only Temporary.

While the principles set forth in the opinion read by Justice Brown would apply to all territories, it is barely possible that there may be a new alignment when the court attempts to deal with the Philippine question. It will be remembered that four judges concurred with Justice Brown in his conclusion in the Downes case, but differed from him in the reasons therefore. Justice White delivered an opinion in which Justices Shiras and McKenna concurred. In explaining his reasons for concurring, Justice White said: "Mr. Justice Brown, in announcing the judgment of affirmance, has in his opinion stated his reasons for his concurrence in such judgment. In the result I likewise concur. As, however, the reasons which cause me to do so are different from, if not in conflict with, those expressed in that opinion, if its meaning is by me not misconceived, it becomes my duty to state the convictions which control me." He then proceeded to give very different reasons from those set forth by Justice Brown.

Justice Gray's Opinion.

Justice Gray also gave a separate opinion. He began by saying: "Concurring in the judgment of affirmance in this case, and in substance agreeing with the opinions of Mr. Justice White, I will sum up the reasons for my concurrence in a few propositions which may also indicate my position in other cases now standing for judgment." He bases his conclusion on the ground that congress was dealing with a temporary condition. A few sentences indicate the trend of his argument: "The Civil Government of the United States cannot extend immediately and of its own force, over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power under the control of the president as commander-in-chief. Civil government cannot take effect at once, as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty."

"There must of necessity, be a transition period." "If congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all the restrictions of the constitution." "The system of duties, temporarily established by that act, (the Foraker act) during the transition period, was within the authority of congress under the constitution of the United States."

Merely Temporary Legislation.

Justice Gray sustained the Foraker act because it was in the nature of temporary legislation intended to cover a transition period. What will be his position when the administration attempts to deal with the Philippine question as a permanent proposition? Ex-Attorney General Griggs rejoiced over "the victory for the administration;" he shouted like a boy at a base ball game because his side had won by a score of five to four. But is it certain that a colonial policy has been permanently established? The emphatic dissent of four judges out of nine detracts from the value of the decision as a settlement of a constitutional question, but the division which appeared among the majority and the conflicting reasons which led to the in-harmonious agreement of a bare majority destroys what little weight a five-to-four decision might have in the determination of such a grave issue. It is possible that Justice Gray may not favor the permanent subversion of the constitution; if so, the triumph of the administration is only a temporary one.

Justice Gray's opinion follows:

Concurring in the judgment of affirmance in this case, and in substance agreeing with the opinion of Mr. Justice White, I will sum up the reasons for my concurrence in a few propositions, which may also indicate my position in other cases now standing for judgment.

The cases now before the court do not touch the authority of the United States over the territories, in the strict and technical sense, being those which lie within the United States, as bounded by the Atlantic and Pacific oceans, the Dominion of Canada and the Republic of Mexico, and the territories of Alaska and Hawaii; but they relate to territory, in the broader sense, acquired by the United States by war with a foreign state.

As Chief Justice Marshall said: "The constitution confers absolutely on the government of the union the powers of making war, and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty. The usage of the world is, if a nation be not entirely subdued, to consider the holding of conquered territory as a mere military occupation, until its fate shall be determined at the treaty of peace. If it be ceded by the treaty, the acquisition is confirmed, and the ceded territory becomes a part of the nation to which it is annexed; either on the terms stipulated in the treaty of cession, or on such as its new master shall impose." American Insurance Co. v. Canter, (1828) 1 Pet. 511, 542.

Power of Acquiring Territory.

The civil government of the United States cannot extend immediately, and of its own force, over territory acquired by war. Such territory must necessarily, in the first instance, be governed by the military power under the control of the president as commander-in-chief. Civil government cannot take effect at once, as soon as possession is acquired under military authority, or even as soon as that possession is confirmed by treaty. It can only be put in operation by the action of the appropriate political department of the government, at such time and in such degree as that department may determine. There must, of necessity, be a transition period.

In a Conquered Territory.

In a conquered territory, civil government must take effect, either by the action of the treaty-making power, or by that of the congress of the United States. The office of a treaty of cession ordinarily is to put an end to all authority of the foreign government over the territory; and to subject the terri-